R590. Insurance, Administration.

R590-160. Administrative Proceedings.

R590-160-5. Rules Applicable to All Proceedings.

- (1) Liberal Construction. These rules shall be liberally construed to secure just, speedy and economical determination of all issues presented to the commissioner.
- (2) Deviation from Rules. The commissioner or presiding officer may permit a deviation from these rules insofar as compliance is found to be impracticable or unnecessary or for other good cause.
- (3) Computation of Time. The time within which any act shall be done, as herein provided, shall be computed by excluding the first day and including the last unless the last day is a Saturday, Sunday or a legal holiday, and then it is excluded and the period runs until the end of the next day that is not a Saturday, Sunday, or a legal holiday.
 - (4) Parties.
 - (a) Parties to a proceeding before the commissioner may be:
- (i) Any person, including the Insurance Department, who has a statutory right to be a party or any person who has a legally protected interest or right in the subject matter that may be affected by the proceeding.
- (ii) Any person may become an intervening party when it is established to the satisfaction of the commissioner or presiding officer that the person has a substantial interest in the subject matter of the proceeding and that intervention will be relevant and material to the issues before the commissioner;
 - (iii) The Insurance Department staff;
- (iv) Other persons permitted by the commissioner or presiding officer.
- (b) Classification. Participants in a proceeding shall be styled "applicants", "petitioners", "complainants", "respondents", or "intervenors", according to the nature of the proceeding and the relation of the parties thereto.
 - (5) Appearances and Representation.
- (a) Making an Appearance. A party enters an appearance by filing an initial pleading or an initial response to a notice of agency action at the beginning of the proceeding, giving the party's name, address, telephone number, and stating the party's position or interest in the proceeding.
- (b) (i) Representation of Parties. An attorney who is an active member of the Utah State Bar may represent any party. An individual who is a party to a proceeding may represent himself or herself. An officer duly authorized by corporate resolution may represent a corporation. A general partner may represent a partnership, and a member or manager may represent a limited liability company.
- (ii) An attorney licensed to practice in another jurisdiction in the United States may apply to appear pro hac vice to represent any party in a particular matter by filing a Motion to Appear Pro Hac Vice. A Motion to Appear Pro Hac Vice shall be served on all parties and shall contain:
- (A) the name, address, telephone number, fax number, email address, bar identification number(s), and state(s) of admission of the applicant;

- (B) the name and number of the case in which the applicant is seeking to appear as the attorney of record or, if the case has not yet been filed, a description of the parties;
- (C) a statement whether, in any state, the applicant is currently suspended or disbarred from the practice of law, or has been disciplined within the prior five years, or is the subject of any pending disciplinary proceeding;
- (D) the name, address, Bar identification number, telephone number, fax number and email address of a member of the Utah State Bar to serve as associate counsel; and
- (E) attach a Certificate of Good Standing from the licensing state in which the applicant resides.
- (iii) The presiding officer may issue an order allowing the applicant to appear Pro Hac Vice if it appears that the applicant is qualified and allowing the appearance would be in the interest of justice. The order allowing the applicant to appear may be revoked at any time if the attorney fails to comply with any order or direction of the presiding officer or engages in conduct contrary to the Rules of Professional Conduct. The presiding officer may require Utah counsel to appear at all hearings.
- (c) An attorney or other authorized representative authorized in Subsection R590-160-5(5)(b) above, if previous appearance has not been entered, shall file a Notice of Appearance with the commissioner or presiding officer no later than five days before any hearing at which the attorney or other authorized representative shall appear.
- (d) Insurance Department Staff. Members of the Insurance Department staff may appear either in support of or in opposition to any cause, or solely to discover and present facts pertinent to the issue.
 - (6) Pleadings.
- (a) Pleadings Enumerated. Pleadings before the commissioner shall consist of petitions, complaints, requests for hearing, responsive pleadings, motions, stipulations, affidavits, memoranda, orders, or other notices used by the commissioner in initiating a proceeding.
- (b) Docket Number. Upon the commencement of an adjudicative proceeding, the commissioner shall assign a docket number to the proceeding.
- (c) Title. Pleadings before the commissioner shall be titled in substantially the following form:
- (i) Centered, heading: BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF UTAH;
- (ii) Left side, identification of parties: (COMPLAINANT:,
 RESPONDENT:, PETITIONER:, etc.);
- (iii) Right side, identification of type of action: (NOTICE OF HEARING, ORDER TO SHOW CAUSE, etc.);
 - (iv) Right side, docket number.
- (d) Size and Content of Pleadings. Pleadings shall be typewritten, double-spaced on white $8-1/2 \times 11$ -inch paper. They must identify the proceedings by title and docket number, if known, and shall contain a clear and concise statement of the matter relied upon as a basis for the pleading, together with an appropriate request for relief when relief is sought.

- (e) Amendments to Pleadings. The presiding officer may allow pleadings to be amended or corrected. Amendments to pleadings shall be allowed in accordance with the Utah Rules of Civil Procedure.
- (f) Signing of Pleadings. Pleadings shall be signed and dated by the party or by the party's attorney or other authorized representative and shall show the signer's address, telephone number, and email address, if available. The signature shall be deemed to be a certificate by the signer that the signer has read the pleading and that, to the best of the signer's knowledge and belief, there are good grounds in support of it.
- (g) Petitions. All pleadings praying for affirmative relief (other than applications, complaints, notices of adjudicative proceedings, or responsive pleadings), including requests to intervene shall be styled "petitions."
 - (h) Motions.
- (i) No proceeding before the commissioner may be initiated by a motion except in the case of a Motion for an Order to Show Cause.
- (ii) Motions, other than at a hearing, shall be in writing and submitted for ruling on either written or oral argument. The filing of affidavits in support of the motions or in opposition thereto may be permitted by the presiding officer. Oral motions may be allowed at a hearing at the discretion of the presiding officer.
- (iii) Any motion shall be filed at least ten days prior to the date set for the hearing.
 - (7) Filing and Service.
- (a) A document shall be deemed filed on the date it is delivered to and stamped received by the department.
- (b) An original and one copy of any pleading shall be filed with the department and a copy served upon all other parties to the proceeding. The presiding officer may direct that a copy of all pleadings and other papers be made available by the party filing the same to any person requesting copies thereof who the presiding officer determines may be affected by the proceedings.
- (c) Service may be made upon any party or other person by ordinary mail, by certified mail with return receipt requested, in accordance with the Utah Rules of Civil Procedure, or by any person specifically designated by the commissioner. Service upon licensees, if by mail, shall be to the mailing address or other address on file with the department.
- (d) There shall appear on all documents required to be served a Certificate of Service or Certificate of Mailing in substantially the following form: I do hereby certify that on (date), I (served or mailed by regular mail or certified mail return receipt requested, postage prepaid) (the original/a true and correct copy) of the foregoing (document title) to (name and address), (signed).
- (e) When any party has appeared by attorney or other authorized representative, service upon the attorney or representative constitutes service upon the party.
 - (8) Presiding Officers Disqualification for Bias.
- (a) Any party to a proceeding may move for the disqualification of an assigned presiding officer by filing with the commissioner an Affidavit of Bias alleging facts sufficient to support disqualification.

- (b) The commissioner shall determine the issue of disqualification as a part of the record of the case, and may request and receive any additional evidence or testimony as deemed necessary to make this determination. The hearing will not proceed until the commissioner makes this determination. No appeal shall be taken from the commissioner's Order on the determination of disqualification for bias except as part of an appeal of a final agency action.
- (i) If the commissioner finds that a motion for disqualification was filed without a reasonable basis or good faith belief in the facts asserted, the commissioner may order that the offending party be subject to the appropriate sanctions as are authorized to be imposed by statute or this rule.
- (ii) When a presiding officer is disqualified or it becomes impractical for the presiding officer to continue, the commissioner shall appoint another presiding officer.
- (c) A presiding officer may at any time voluntarily disqualify himself or herself.
- (9) Ex Parte Contacts Prohibited. Except as to matters that by law are subject to disposition on an exparte basis, the commissioner and the presiding officer involved in a hearing shall not have exparte contact with persons and parties, including staff members of the department appearing as parties to a proceeding, directly or indirectly involved in any matter that is the subject of a pending administrative proceeding unless all parties are given notice and an opportunity to participate.
- (10) Standard of Proof. All issues of fact in administrative proceedings before the commissioner shall be decided upon the basis of a preponderance of the evidence standard.

KEY: insurance

Date of Enactment or Last Substantive Amendment: [December 29, 2011] 2013

Notice of Continuation: October 30, 2008

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 63G-4-102; 63G-4-203